

**IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA**

**GEORGIA DEPARTMENT OF HUMAN  
SERVICES, DIVISION OF CHILD  
SUPPORT SERVICES, ex. rel.,  
MALIK XAVIER SMITH,**

**ADMIN. ACTION FILE NO.  
OSAH-CSS-EST-[REDACTED]-WOODARD**

**DCSS No: [REDACTED]**

**Petitioner,  
v.**

**[REDACTED],**

**Respondent.**

**FINAL CHILD SUPPORT ORDER**

**I. INTRODUCTION**

This matter was originally set for a hearing on April 15, 2013, at the Marietta Municipal Court, Cobb County, Georgia, but was continued to May 20, 2013. Petitioner was represented by Carol Lawing, Special Assistant Attorney General, Marietta. Respondent is the mother and Non-Custodial Parent ("Mother") of minor child M.S. She was represented by Rhonda Conkle, Attorney at Law. Not present at the hearing was the father and Custodial Parent [REDACTED] ("Father"), who had been notified of the date, time, and location of the hearing but did not attend. This Final Order Child Support Order is based solely on a preponderance of the credible evidence presented by the parties, including worksheets, an audit report, and an Arrears and Interest Calculator submitted by Respondent.

For the reasons set forth below, Father is required to continue child support payments of \$179.00 per month to be paid in biweekly installments of \$83.22, as required by a prior order of the Fulton County Superior Court. Mother is not required to make support payments to Father.

**II. FINDINGS OF FACT**

1.

Mother and Father are the parents of M.S., born March 6, 1996.

2.

Mother had actual physical custody of M.S. until August 2012.

3.

Previously, the Fulton County Superior Court entered an order ("Fulton Child Support Order"), requiring Father to pay \$179.00 per month in \$83.22 biweekly installments as child support for M.S.

4.

Father was frequently non-compliant with his child support obligations, and as of the hearing date, Father was at least \$12,957.65 in arrears, totaling more than six years of unpaid child support.

5.

In August 2012, M.S. moved in with Father full-time after Mother agreed that he could live with Father to enable him to attend high school in Father's school district. Mother agreed that M.S. would have an educational advantage if he changed districts, as the new high school has an excellent band program.

6.

Even though Father had consistently failed to make support payments while Mother had actual physical custody of M.S., Father applied for child support services with Petitioner once M.S. moved in with him.

7.

Father recently obtained a legitimation order in the Fulton County Superior Court, granting him parental rights. However, the Superior Court did not amend the support order that requires Father to pay \$179.00 per month. No evidence was presented on whether Father sought to have the court modify or terminate his child support obligations or have Mother pay child support.

8.

Pursuant to the Father's request for child support, Petitioner submitted a Child Support Worksheet and proposed Final Order to obligate Mother to pay child support to Father. Mother's monthly income is shown as \$2,851.25. Father's monthly income is \$2,871.54. Petitioner asserted that Mother's share of the support obligation is 49.82%, while Father's share is 50.18%. But for the previous Fulton County Superior Court's Child Support Order, the guidelines would require Mother to pay \$482.74 per month to Father.

## II. CONCLUSIONS OF LAW

1.

A child support order is an "order of a court or authorized administrative agency requiring the payment of child support." O.C.G.A. § 19-6-26(a)(1).

2.

A Georgia administrative law judge cannot vacate, modify, or otherwise change a preexisting child support order issued by the Superior Court. 28 USCS § 1738B(d) (court that entered the order has "continuing, exclusive jurisdiction" over the order); O.C.G.A. § 19-6-26(a)(2), (c).

3.

Because there is a preexisting child support order issued by the Fulton County Superior Court, which that court did not modify when entering the subsequent legitimation order, the Fulton Child Support Order remains in full force and effect. See O.C.G.A. §§ 19-6-15(e) (child support order continues until child reaches age of majority), 19-6-26(4) ("Modification" means a change

in a child support order that affects the amount, scope, or duration of the order and modifies, replaces, supersedes, or otherwise is made subsequent to a child support order or foreign child support order.”) 19-6-15(k)(4) (modification for changed circumstances).

4.

Mother may take action to enforce the Fulton Child Support Order. She may also voluntarily agree to forebear from enforcing the order and grant Father a credit towards his support obligations.

### **III. ORDER**

It is **ORDERED** that Father shall continue to make support payments to Mother in the amount of \$179.00 per month in compliance with the Fulton Child Support Order.

The undersigned declines to rule on Mother’s proposal to grant Father a credit for the presumptive child support she would otherwise have been required to pay in the absence of the standing Fulton Child Support Order. The present Order does not prohibit Mother from taking enforcement action against Father based on his failure to pay his child support obligations under the standing order. Finally, nothing in this ruling prohibits Father from petitioning the Fulton County Superior Court for a modification of his support obligations.

**SO ORDERED**, this \_\_\_\_ day of August, 2013.

\_\_\_\_\_  
**M. PATRICK WOODARD, JR.**  
Administrative Law Judge